



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

BOARD OF PATENT APPEALS & INTERFERENCES

In re the Application of: )  
Morello, *et al.* ) Conf. No.: 2229  
Serial No.: 09/896,365 ) Group Art Unit: 3635  
Filed: June 29, 2001 ) Examiner: Horton, Yvonne M.  
For: A BUILDING PANEL AND )  
PANEL CRIMPING )  
MACHINE )

**Mail Stop Appeal Brief - Patents**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**APPELLANT'S SUBSTITUTE APPEAL BRIEF**

Sir:

This Substitute Appeal Brief is filed in response to the Notification of Non-Compliant Appeal Brief mailed April 3, 2006, which was issued by the Examiner in response to the Order Returning Undocketed Appeal to Examiner dated October 17, 2005. The Substitute Appeal Brief is also filed in response to the Final Office Action mailed May 18, 2004.

**I. Real Party in Interest**

The real party in interest is MIC Industries, Inc., Reston, Virginia, as evidenced by an Assignment recorded at Reel/Frame 012233/0612.

**II. Related Appeals and Interferences**

There are no related appeals or interferences to the instant application.

**III. Status of Claims**

Claims 1-20 are pending in the above-referenced application. Claims 1-11 and 14-20 have been finally rejected, and claims 12 and 13 are understood to be objected to as depending from a rejected base claim, but otherwise allowable as discussed below. Claims 21-27 have been withdrawn as non-elected claims pursuant to an earlier Restriction Requirement. Claims 1 and 15 are independent claims. Claims 2-14 depend from claim 1, and claims 16-20 depend from claim 15.

The Final Office Action contains an indication at page 2 thereof that claims 1-20 are rejected, but it does not articulate grounds of rejection against claims 12 and 13. Similarly, the Office Action of November 10, 2003 does not set forth grounds of rejection against claims 12 and 13. The Office Action of February 3, 2003 sets forth a ground of rejection against claim 12 at page 3 thereof, but not against claim 13. Thus, the Office's initial rejection of claim 12 was not carried over to the next two Office Actions, and the Office has never articulated a ground of rejection against claim 13. Therefore, it appears that claims 12 and 13 are not rejected, the implication being that claims 12 and 13 should have been identified as objected to as depending from a rejected base claim, but otherwise allowable. Thus, the indication in the Office Action

Summary at page 2 of the Final Office Action that claims 1-20 are rejected appears to be in error with regard to claims 12 and 13.

**IV. Status of Amendments**

No amendments have been filed subsequent to the final rejection. Upon the Examiner's indication that claims 12 and 13 are considered objected to as depending from a rejected base claim, but otherwise allowable, Appellant intends to submit an Amendment to place claims 12 and 13 in independent form. It is believed that entry of such an Amendment will be proper pursuant to 37 C.F.R. § 41.33(b)(2) as set forth at M.P.E.P. § 1206.

**V. Summary of Claimed Subject Matter**

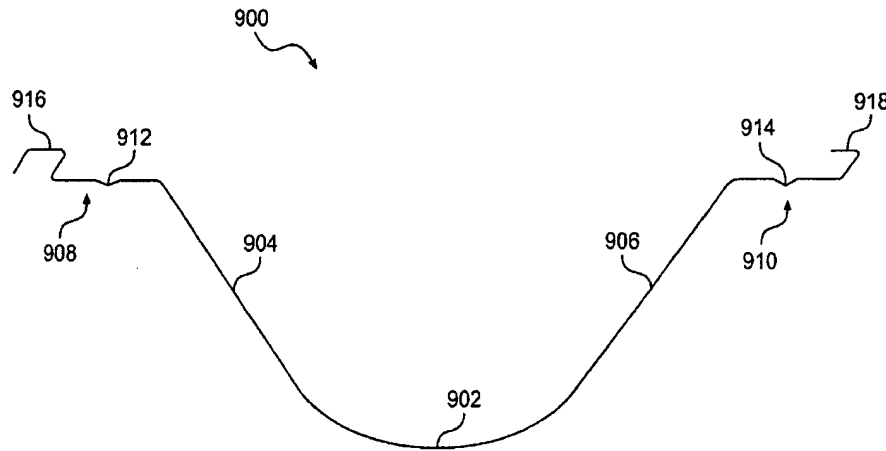
The claimed subject matter of independent claims 1 and 15 relates to an improved building panel having increased strength and rigidity, particularly in its resistance to bending moments, and to a building structure comprising a plurality of such interconnected building panels.

**A. Independent Claim 1**

Independent claim 1 is directed to a building panel that includes a curved central portion, a pair of side wall portions extending from opposite ends of the curved central portion, and a pair of complementary wing portions extending from the side wall portions. An exemplary building panel 900 is illustrated in FIG. 9 (reproduced below), which is discussed at page 10, line 14 through page 13, line 9 of the application. Using a curved central portion instead of the straight central portion provides the building panel with increased strength and rigidity compared to prior art building panels with straight central portions (including those with notched stiffeners),

thereby providing improved resistance to both positive and negative bending moments.

(Application, p. 6, lines 3-15.)



**FIG. 9**

With reference to FIG. 9, the exemplary building panel illustrated therein includes a curved central portion 902. A pair of sidewall portions 904 and 906 extend from opposite ends of the curved central portion 902. (Application, p. 10, lines 21-23 and p. 11, lines 16-26). A pair of complementary wing portions 908 and 910 extend from the side wall portions 904 and 906, respectively. (Application, p. 10, lines 24-26.) Such building panels can be used to construct a building structure, such as a building. (*e.g.*, Application Abstract.)

#### **B. Dependent Claim 12**

Dependent claim 12 depends from claim 1, and recites that the side wall portions extend at an incline from said opposite ends of said curved central portion. As shown in the example of FIG. 9, a pair of sidewall portions 904 and 906 extend at an incline (neither horizontal nor

vertical in the plane of the paper of FIG. 9)<sup>1</sup> from opposite ends of the curved central portion 902. (Application, p. 10, lines 21-23.)

### **C. Dependent Claim 13**

Dependent claim 13 depends from claim 1, and recites that the side wall portions extend tangentially from said opposite ends of said curved central portion. As shown in the example of FIG. 9, a pair of sidewall portions 904 and 906 extend tangentially from opposite ends of the curved central portion 902. The side wall portions 904 and 906 are disposed along lines that form tangents to the central portion 902 at points where the curve of the central portion 902 terminates. (Application, p. 11, lines 16-26).

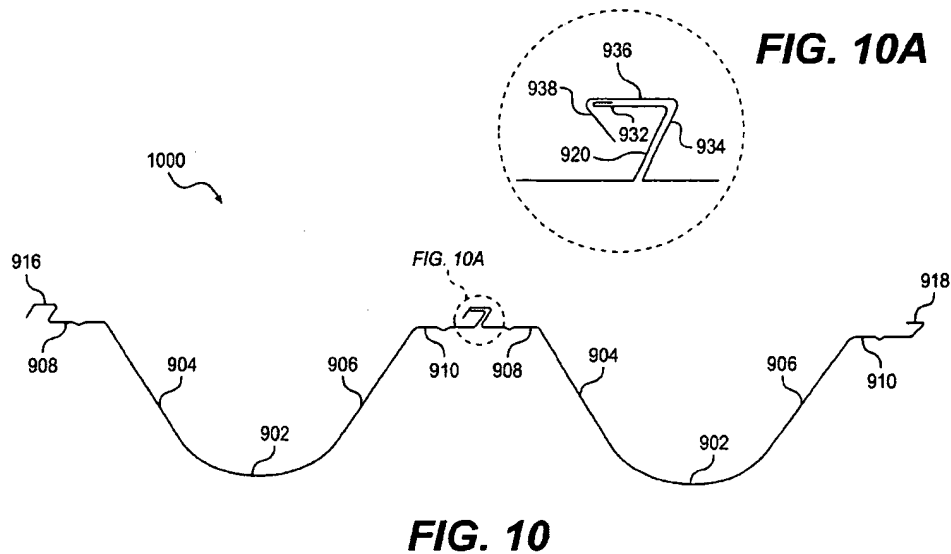
### **D. Independent Claim 15**

Independent claim 15 is directed to a building structure comprising a plurality of interconnected panels. Each panel includes a curved central portion, a pair of sidewall portions extending from opposite ends of the curved central portion, and a pair of wing portions extending from the side wall portions. Again, an exemplary panel is illustrated in FIG. 9 (shown above), wherein a pair of sidewall portions 904 and 906 extend from opposite ends of the curved central portion 902, and wherein a pair of complementary wing portions 908 and 910 extend from the side wall portions 904 and 906, respectively. One wing portion (e.g., 908) extends from a first one of the side wall portions (e.g., 904), and the other wing portion (e.g., 910) extends from a second one of the side wall portions (e.g., 906). One wing portion of a first panel can be connected to another wing portion of another panel to provide an interconnection between panels, such as shown in FIGS. 10 and 10A (reproduced below). For example, the exemplary building panel 900 can comprise a hook portion 916 at one wing portion 908 and a hem portion

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<sup>1</sup> See attached definition of “incline” in the Evidence Appendix from Webster’s New World College Dictionary, Fourth Edition, 1999, Macmillan USA, p. 722.

918 at the other wing portion 910. (Application, p. 12, lines 18-21.) As shown in the example of FIG. 10, the hook portion 916 of one building panel can interconnect with the hem portion 918 of another building panel to form a building structure 1000, and additional building panels can further be connected. (Application, p. 13, lines 3-9.)



#### VI. Grounds of Rejection to be Reviewed on Appeal

Claims 1-3, 14, 15-17 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,962,622 issued to Albrecht (hereinafter "*Albrecht*") (Final Office Action, p. 2). Claims 1-3, 8, 9, 14, 15-17, 19 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,282,936 issued to Blazley (hereinafter "*Blazley*") (Final Office Action, p. 2). Claims 4-11, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of *Albrecht* (Final Office Action, p. 3). Claims 4-11 and 18 stand rejected under 35

U.S.C. § 103(a) as being obvious in view of *Blazley* (Final Office Action, p. 4).<sup>2</sup> These rejections are appealed.

## VII. Argument

### A. The Examiner Is Interpreting the Claims Unreasonably and Inconsistent With The Specification

When examining claims for patentability, claims are interpreted as broadly as is reasonable and consistent with the specification.<sup>3</sup> In the Final Office Action dated May 18, 2004, as in the earlier Office Actions dated November 10, 2003, and February 3, 2003, the Examiner attempts to interpret the claims of the present invention inconsistently with the specification. The Examiner incorrectly reads the claimed curved central portion on a longitudinal stiffening rib (or notch). The Examiner also incorrectly reads the claimed side walls on portions of a central flat region adjacent to a stiffening rib (in *Albrecht*) and on portions of edge flanges that are used for interconnecting building elements (in *Blazley*). (Final Office Action at pp. 2-3).

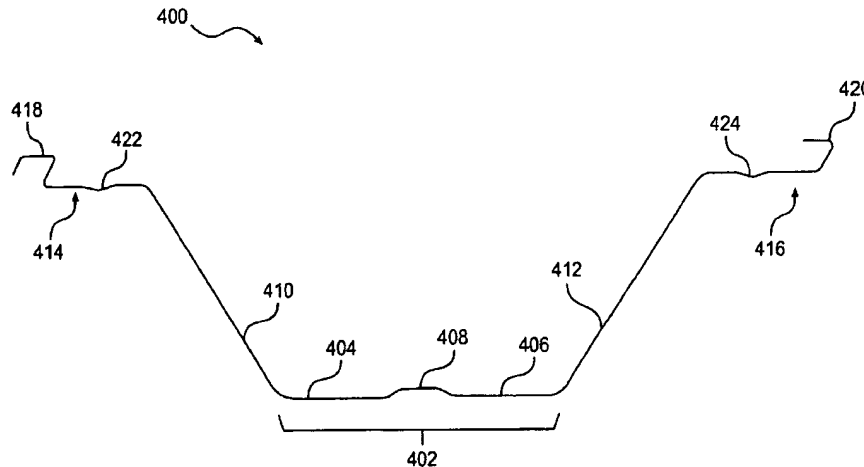
First, the Examiner interprets the claimed curved central portion improperly by reading it on a stiffening rib or notch. The specification clearly distinguishes a building panel having curved central portion from a known building panel having a central flat region with a longitudinal stiffening rib (notch). Simply put, the claimed curved central region does not correspond to the longitudinal stiffening ribs (notches) of known building panels. In describing a prior art building panel, the present application refers to FIG. 4 therein (reproduced below), and states:

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<sup>2</sup> The Final Office Action at p. 4 initially states that claims 4-7, 10, 11 and 18 are rejected, but indicates later at p. 4 that the rejection also pertains to claims 8-9.

<sup>3</sup> See, e.g., *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).

For example, FIG. 4 illustrates a cross section of a known building panel typically used to construct such buildings. The building panel 400 includes a central portion 402 and two inclined side wall portions 410, 412 extending from opposite ends of the central portion 402. The central portion 402 is straight, and in order to increase that portion's stiffness it may include a notched portion 408. (Application, p. 2, lines 14-21.)



**FIG. 4**

The application further states:

The present invention is an improved building panel capable of withstanding increased bending moments. The building panel includes a curved central portion in lieu of a straight central portion. The curved central portion has a concave shape, which provides the building panel with superior rigidity in comparison to the straight central portion. The panel's improved strength and rigidity even surpass that of a building panel having *a straight central portion that includes a notched stiffener*. (Application, p. 6, lines 3-11 (emphasis added)).

Thus, it is clear from the specification that a stiffening rib or notch cannot constitute the claimed curved central portion. In describing the prior art, as noted above, the application clearly distinguishes a stiffening notch or rib of known building panels from the central portion within which a stiffening rib or notch may be disposed.



In addition, the Examiner interprets the claimed side walls improperly by reading the claimed side walls on portions of a central flat region adjacent to a stiffening rib (in *Albrecht*) and on portions of edge flanges that are used for interconnecting building elements (in *Blazley*). Side walls as referred to in the present application are portions of a building panel extending between (and connected to) a central portion and a wing portion, whether that central portion is a flat central portion of a known building panel that may have a stiffening rib, such as shown in FIG. 4 above, or whether that central portion is a curved central portion of an inventive building panel, such as shown in the example of FIG. 9 above.<sup>4</sup> It is clear from the claim language itself and from the discussion of FIG. 4 cited above that side walls extend from a central portion – in the claimed subject matter, the central portion is curved, and in the prior art of FIG. 4 (like *Albrecht*), the central portion is flat and includes a stiffening notch or rib. Side walls as claimed and as described in the specification are not the same as the central portion nor are they part of an edge flange for interconnecting building panels. The Examiner’s treatment of the term “side wall” is contrary to the meaning of the term as used in the specification.

**B. Neither A *Prima Facie* Case of Anticipation nor Obviousness Utilizing Either the *Albrecht* Reference or the *Blazley* Reference Has Been Demonstrated**

1. The Examiner Has Not Demonstrated a *Prima Facie* Case of Anticipation Utilizing *Albrecht* since *Albrecht* does not Disclose a Building Panel Comprising a Curved Central Portion with Side Wall Portions Extending from its Opposite Ends

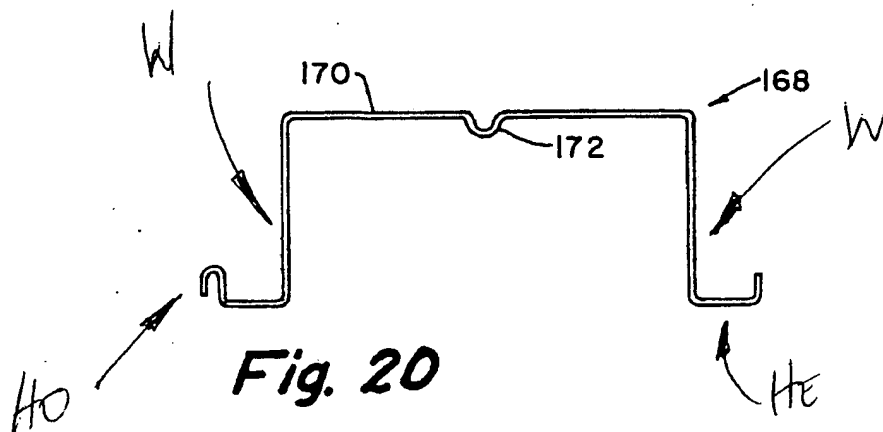
Claims 1-3, 14, 15-17 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,962,622 issued to *Albrecht* (Final Office Action, p. 2). To establish a *prima facie* case of anticipation under 35 U.S.C. § 102, the Examiner must

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<sup>4</sup> The meaning of “side walls” is evident from the claims language itself interpreted in light of specification, e.g., FIGS. 4, 9 and 10, p. 2, line 14 through p. 3, line 5, p. 10, line 21 through p. 11, line 26, and p. 12, line 18 through p. 13, line 9.

demonstrate that a single prior art reference discloses all of the claim's essential elements.<sup>5</sup> Thus, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference."<sup>6</sup>

The building panel of claim 1 includes a curved central portion and a pair of side wall portions. The side wall portions extend from the opposite ends of the curved central portion. The Examiner alleges that "stiffening rib 172" illustrated in Fig. 20 of *Albrecht* (reproduced below with the Examiner's hand drawn markings)<sup>7</sup> corresponds to the claimed curved central portion, and that "flat region or crest 170" corresponds to the claimed side wall portions. (Final Office Action at p. 2.)<sup>8</sup>



However, the Examiner's argument ignores the fact that the present application explicitly distinguishes a building panel having a curved central portion from one having a flat central portion with a stiffening rib (notch). The application states, for example, "Unlike the panel 400

<sup>5</sup> E.g., *Rockwell Inter. Corp. v. U.S.*, 147 F.3d 1358, 1363, 47 U.S.P.Q.2d 1027, 1031 (Fed. Cir. 1998); *Gechter v. Davidson*, 116 F.3d 1454, 1457, 43 U.S.P.Q.2d 1030, 1032 (Fed. Cir. 1997); *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985); *W.L. Gore & Associates v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

<sup>6</sup> *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

<sup>7</sup> FIG. 20 of *Albrecht* as marked up by the Examiner was provided with the Office Action of November 10, 2003.

<sup>8</sup> See, e.g., *Albrecht* at col. 7, lines 62-64 for *Albrecht's* use of this terminology.

illustrated in Fig. 4, which has a straight central portion 402, the panel of the present invention, as illustrated in Fig. 9, includes a curved central portion 902." (Application, p. 11, lines 3-6.)

Furthermore, with reference to FIG. 4 of the present application, the Application further states:

The central portion 402 [of the prior art] is straight, and in order to increase that portion's stiffness it may include a notched portion 408. Assuming the central portion includes a notched stiffener, the central portion 402 would be separated into two sub-central portions 404, 406. (Application, p. 2, lines 19-23.)

The Examiner's argument is also contrary to the disclosure of *Albrecht* itself. *Albrecht* discloses, "FIG. 20 illustrates a hat-shaped roof deck 168 presenting a *flat region* or crest 170 provided with a stretched-in *stiffening rib* 172." (*Albrecht*, col. 7, ll. 62-64.) Thus, *Albrecht* discloses that the stiffening rib 172 is only part of the larger flat region or crest 170. In addition, *Albrecht* further states:

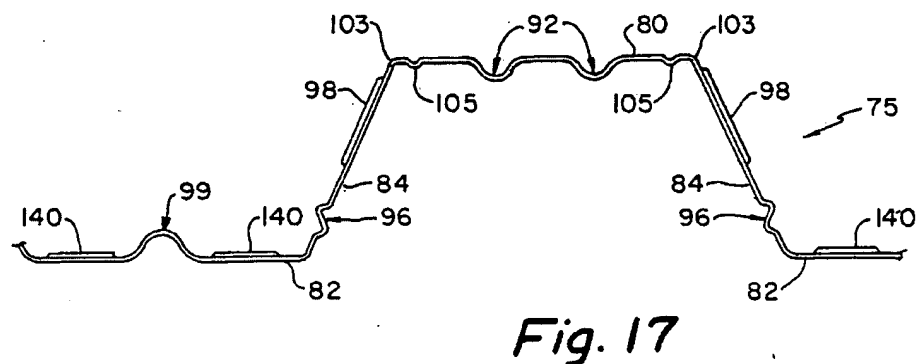
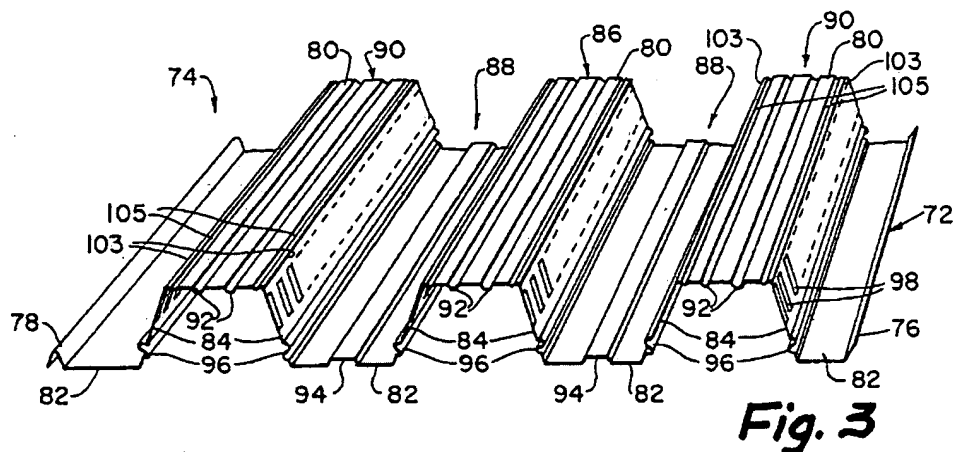
In its broadest aspects, the present invention provides improvements in cold formed, profiled building units of the type used as floor, roof or wall elements. *The profiled building unit* is formed from a sheet metal strip of substantially uniform sheet thickness and *having at least one flat region* that is subject to buckling under compressive forces. *Examples of such flat regions include the crests* and the valleys of profiled floor deck and roof deck, and of profiled facing sheets used as the exposed face of wall and roof structures; and the flat central web of liner sheets used as the interior face of wall structures.

In accordance with the present invention, at least one stiffening rib is formed *in the flat region*. (*Albrecht*, col. 2, ll. 43-56, emphasis added.)

The Examiner's designation of the stiffening rib 172 of *Albrecht* as a curved central portion and designation of flat region or crest 170 as a side wall portion is inconsistent with the disclosure in *Albrecht* and inconsistent with the disclosure in the present application.

The fact that the stiffening rib 172 cannot correspond to the claimed curved central portion is also evident from other portions of *Albrecht*. For example, the building panel shown in FIGS. 3 and 17 of *Albrecht* (reproduced below), which is similar to that shown in FIG. 4 of the

present application, shows stiffening ribs 92 that are clearly disposed within a central flat portion between junctures 103, similar to notch 408 is disposed within flat portion 402 illustrated in FIG. 4 of the present application. Sloped webs 84 shown in FIGS. 3 and 17 of *Albrecht* extend from the junctures 103, similar to side walls 410 and 412, which extend from central portion 402 illustrated in FIG. 4 of the present application. Clearly, stiffening ribs 92 cannot correspond to the claim curved central portion. Likewise, since one skilled in the art would understand that *Albrecht* uses the term “stiffening rib” or “rib” consistently throughout his disclosure, stiffening rib 172 of FIG. 20 of *Albrecht* cannot correspond to the claimed curved central portion.



The Examiner is ignoring the distinctions between central portions and stiffening ribs (notches) disposed within central portions, which are evident from both the present application

and the disclosure of *Albrecht*. With a proper understanding of *Albrecht*'s feature 172 as a stiffening rib, which is not properly considered a curved central portion under the disclosure of the present specification for reasons discussed above, it is evident that *Albrecht* does not disclose a curved central portion as claimed. Rather, as indicated above, *Albrecht* discloses a flat central region with at least one stiffening rib. Thus, *Albrecht* does not provide the requisite disclosure to anticipate claim 1.

Each of claims 1-3, 14, 15-17 and 20 requires a curved central portion that is patentably distinct from a flat region with a stiffening rib, as discussed above. Accordingly, *Albrecht* fails to anticipate claims 1-3, 14, 15-17 and 20 of the present invention. The rejection should be reversed.

2. The Examiner Has Not Demonstrated A *Prima Facie* Case of Anticipation Utilizing *Blazley* since *Blazley* does not Disclose a Building Panel Comprising a Curved Central Portion Having Side Wall Portions Extending From its Opposite Ends and Having a Pair of Complementary Wing Portions Extending From the Side Wall Portions

Claims 1-3, 8, 9, 14, 15-17, 19 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Blazley*. (Final Office Action, p. 2)

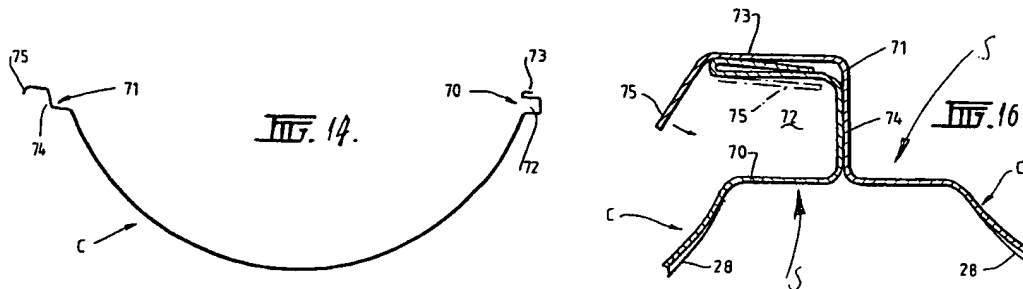
As stated earlier, when examining claims for patentability, claims are interpreted as broadly as is reasonable and consistent with the specification.<sup>9</sup> To establish a *prima facie* case of anticipation under 35 U.S.C. § 102, the Examiner must demonstrate that a single prior art

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<sup>9</sup> See, e.g., *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).

reference discloses all of the claim's essential elements.<sup>10</sup> Thus, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference."<sup>11</sup>

Claims 1-3, 8, 9, 14, 15-17, 19 and 20 each recite a building panel that comprises a curved central portion, a pair of side wall portions extending from opposite ends of the curved central portion, and a pair of complementary wing portions extending from the side wall portions. The Examiner cites features found in FIGS. 14 and 16 of *Blazley* (reproduced below with the Examiner's hand drawn markings)<sup>12</sup> as allegedly corresponding the above-noted features.



The Examiner alleges that portions of the male edge flange 70 and female edge flange 71 of *Blazley* allegedly correspond to the claimed side walls (hand labeled by the Examiner as "S" in FIG. 16 of *Blazley*). (See, also, *Blazley* at Col. 10, lines 26-49.) However, a comparison of FIGS. 9 and 10 (above) of the present application with FIGS. 14 and 16 of *Blazley* shows that, if anything, the portions labeled "S" by the Examiner could only hypothetically correspond to

<sup>10</sup> E.g., *Rockwell Inter. Corp. v. U.S.*, 147 F.3d 1358, 1363, 47 U.S.P.Q.2d 1027, 1031 (Fed. Cir. 1998); *Gechter v. Davidson*, 116 F.3d 1454, 1457, 43 U.S.P.Q.2d 1030, 1032 (Fed. Cir. 1997); *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985); *W.L. Gore & Associates v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

<sup>11</sup> *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

<sup>12</sup> FIG. 16 of *Blazley* as marked up by the Examiner was provided with the Office Action of November 10, 2003.

sections of the claimed wing portions, not the claimed sidewalls. (*See* Application at p. 10, lines 24-28, and p. 12, line 18 through p. 13, line 9.) A proper assessment of *Blazley* in view of the description of side wall portions and wing portions in the present application (*see, e.g.*, wing portions 908 and 910 shown in FIGS 9 and 10) reveals that the building elements shown in FIGS. 14 and 16 of *Blazley* do not possess side wall portions whatsoever. Rather, FIGS. 14 and 16 of *Blazley* illustrate building elements having a curved portion that terminates directly at male edge flange 70 and female edge flange 71 with no side wall portions therebetween. From another perspective, the Examiner's attempt to correlate sections of the male edge flange 70 and female edge flange 71 with the claimed side wall portions necessarily prevents finding that the remaining sections of the male edge flange 70 and female edge flange 71 correspond to the claimed wing portions, as is readily apparent from how wing portions are described and illustrated in the present application. (*See* Application at p. 10, lines 24-28, p. 12, line 18 through p. 13, line 9, and FIGS. 9-10.) Accordingly, *Blazley* fails to anticipate claims 1-3, 8, 9, 14, 15-17, 19 and 20 of the present invention. The rejection should be reversed.

3. The Examiner Has Not Demonstrated A *Prima Facie* Case of Obviousness Utilizing *Albrecht*

Claims 4-11, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of *Albrecht*.<sup>13</sup>

The Examiner can satisfy her burden of establishing a *prima facie* case of obviousness "**only by showing some objective teaching** in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references."<sup>14</sup> In this case, the Examiner cites only one reference in the rejection. Modifying

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<sup>13</sup> 05/18/04 Final Office Action, p. 3.

<sup>14</sup> *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988) (emphasis added).

a single reference to support a determination of obviousness is improper absent a sufficient teaching or suggestion in the prior art to make such a modification.<sup>15</sup> Thus, modifications to a prior art reference are improper without evidence of a

specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of [the applicant's] invention to make the combination in the manner claimed.<sup>16</sup>

Here, as noted above regarding the claim rejections under 35 U.S.C. § 102(b), *Albrecht* does not disclose all of the claimed elements. The rejection under 35 U.S.C. § 103(a) has been applied only to dependent claims. The Examiner has not rejected independent claims 1 and 15 under 35 U.S.C. § 103(a). Since independent claims 1 and 15 are not anticipated by *Albrecht*, the above-noted dependent claims are allowable at least by virtue of dependency. The Examiner has not pointed to any teaching or suggestion that supports modifying *Albrecht* to provide a building panel as claimed in independent claims 1 and 15 so as to render these claims or claims 4-11, 18 and 19 obvious. The rejection should be reversed.

4. The Examiner Has Not Demonstrated A *Prima Facie* Case of Obviousness Utilizing *Blazley*

Claims 4-11 and 18 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of *Blazley*.<sup>17</sup>

Here, as noted above regarding the claim rejections under 35 U.S.C. § 102(b), *Blazley* does not disclose all of the claimed elements. The rejection under 35 U.S.C. § 103(a) has been

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<sup>15</sup> See *In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992) (stating that "[a]lthough couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious "modification" of the prior art").

<sup>16</sup> *In re Kotzab*, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (holding that the Board did not make out a proper *prima facie* case of obviousness when it modified a single reference without a specific motivation to make such a modification).

<sup>17</sup> 05/18/04 Final Office Action, p. 4. The Final Office Action at p. 4 initially states that claims 4-7, 10, 11 and 18 are rejected, but indicates later at p. 4 that the rejection also pertains to claims 8-9.



applied only to dependent claims. The Examiner has not rejected independent claims 1 and 15 under 35 U.S.C. § 103(a). Since independent claims 1 and 15 are not anticipated by *Blazley*, the above-noted dependent claims are allowable at least by virtue of dependency. The Examiner has not pointed to any teaching or suggestion that supports modifying *Blazley* to provide a building panel as claimed in independent claims 1 and 15.

**C. The Final Office Action Does Not Articulate a Rejection Against Dependent Claim 12, and Claim 12 Should Have Been Identified as Objected To but Otherwise Allowable**

As noted in Section III above, the Final Office Action contains an indication at page 2 thereof that claims 1-20 are rejected, but it does not articulate grounds of rejection against claim 12. As further noted in Section III above, though claim 12 was rejected once initially, that rejection was not carried over to the next two Office Actions. Thus, the implication is that claim 12 should have been identified as objected to as depending from a rejected base claim, but otherwise allowable. If the Office intended to reject claim 12, it is clear that the Office has not met its burden in this regard because no grounds of rejection are presently articulated against claim 12.

In fact, it is evident by straightforward inspection of FIG. 20 of *Albrecht* and FIGS. 14 and 16 of *Blazley* that none of the structures illustrated therein show side wall portions extending at an incline from opposite ends of a curved central portion as recited in claim 12. Accordingly, claim 12 is additionally patentable over both *Albrecht* and *Blazley* based upon the recitation of this additional distinguishable subject matter.

**D. The Final Office Action Does Not Articulate a Rejection Against Dependent Claim 13, and Claim 13 Should Have Been Identified as Objected To but Otherwise Allowable**

As noted in Section III above, the Final Office Action contains an indication at page 2 thereof that claims 1-20 are rejected, but it does not articulate grounds of rejection against claim

13. As further noted in Section III above, the Office has never articulated a ground of rejection against claim 13. Thus, the implication is that claim 13 should have been identified as objected to as depending from a rejected base claim, but otherwise allowable. If the Office intended to reject claim 13, it is clear that the Office has not met its burden in this regard because no grounds of rejection are presently, or have ever been, articulated against claim 13.

In fact, it is evident by straightforward inspection of FIG. 20 of *Albrecht* and FIGS. 14-16 of *Blazley* that none of the structures illustrated therein show side wall portions extending tangentially from opposite ends of a curved central portion as recited in claim 13. Accordingly, claim 13 is additionally patentable over both *Albrecht* and *Blazley* based upon the recitation of this additional distinguishable subject matter.

#### **E. Conclusion**

The Examiner is interpreting the claims unreasonably and inconsistent with the plain meanings of terms as evidenced by the specification. When the claims are interpreted properly, it is evident that neither *Albrecht* nor *Blazley* disclose the combinations of features recited in independent claims 1 and 15. Furthermore, the Examiner has not pointed to any specific evidence that suggests modifying *Albrecht* or *Blazley* to render independent claims 1 and 15 obvious. Claims 12 and 13, for which no grounds of rejection are presently articulated, should have been identified as being objected to as depending from a rejected base claim, but otherwise allowable. Claims 12 and 13 are further distinguishable over *Albrecht* and *Blazley* by virtue of the subject matter recited in these claims. Thus, Appellant believes the rejected claims are in condition for allowance. Appellant respectfully requests reversal of the Examiner's rejection and allowance of these claims.

**VIII. Claims Appendix**

A Claims Appendix containing a copy of the claims subject to this appeal is attached.

**IX. Evidence Appendix**

No evidence is being submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132. An Evidence Appendix is attached, which contains an excerpt from Webster's New World College Dictionary, Fourth Edition, 1999, Macmillan USA, p. 722.


**X. Related Proceedings Appendix**

There are no related proceedings. A related proceedings appendix indicating "None" is attached.

Respectfully submitted,

Date: August 3, 2006

By:



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**CLAIMS APPENDIX**

(Original) A building panel, comprising:

- (a) a curved central portion;
- (b) a pair of side wall portions extending from opposite ends of said curved central portion; and
- (c) a pair of complementary wing portions extending from said side wall portions.

- 2. (Original) The building panel of Claim 1, wherein said curved central portion has a concave shape from a perspective between said side wall portions.
- 3. (Original) The building panel of Claim 1, wherein said curved central portion resembles an arc.
- 4. (Original) The building panel of Claim 3, wherein said arc ranges from 15° to 130°.
- 5. (Original) The building panel of Claim 3, wherein said arc ranges from 40° to 130°.
- 6. (Original) The building panel of Claim 5, wherein said arc ranges from 60° to 120°.
- 7. (Original) The building panel of Claim 6, wherein said arc is 85°.
- 8. (Original) The building panel of Claim 3, wherein said arc has a radius ranging from 4 inches to 25 inches.
- 9. (Original) The building panel of Claim 3, wherein said arc has a radius ranging from 4 inches to 12 inches.
- 10. (Original) The building panel of Claim 9, wherein said radius ranges from 5 inches to 8 inches.
- 11. (Original) The building panel of Claim 9, wherein said radius is 6 inches.
- 12. (Previously Presented) The building panel of Claim 1, wherein said side wall portions extend at an incline from said opposite ends of said curved central portion.

13. (Previously Presented) The building panel of Claim 1, wherein said side wall portions extend tangentially from said opposite ends of said curved central portion.
14. (Original) The building panel of Claim 1, wherein one of said wing portions comprises a hook portion and the other of said wing portions comprises a hem portion.
15. (Original) A building structure, comprising a plurality of interconnected panels, each of said panels comprising:
  - (a) a curved central portion;
  - (b) a pair of side wall portions extending from opposite ends of said curved central portion; and
  - (c) a pair of wing portions extending from said side wall portions, wherein one wing portion extends from a first of said side wall portions and the other wing portion extends from a second of said side wall portions, wherein said one wing portion from a first of said panels is connected to said other wing portion from a second of said panels.
16. (Original) The building structure of Claim 15, wherein said curved central portion has a concave shape from a perspective between said side wall portions.
17. (Original) The building structure of Claim 15, wherein said curved central portion resembles an arc.
18. (Original) The building structure of Claim 17, wherein said arc ranges from 15° to 130°.
19. (Original) The building panel of Claim 17, wherein said arc has a radius ranging from 4 inches to 25 inches.
20. (Original) The building structure of Claim 15, wherein said one wing portion comprises a hook portion and said other wing portion comprises a complementary hem portion such that said hook and hem portions interconnect.

**EVIDENCE APPENDIX**

An excerpt from Webster's New World College Dictionary, Fourth Edition, 1999,  
Macmillan USA, p. 722, is attached hereto.

# WEBSTER'S NEW WORLD<sup>TM</sup>

## COLLEGE DICTIONARY

Fourth Edition

Michael Agnes

EDITOR IN CHIEF

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**inclinal** (in'klin) *n.* a liking or preference. 6. any action, practice, or thing toward which one is inclined. — **inclinal** *adj.*

**SYN** — Inclination refers to a more or less vague mental disposition toward some action, practice, or thing (he had an inclination to refuse); leaning suggests a general inclination toward something, but implies only the direction of attraction (and not the final choice) (Dr. Green had always had a leaning toward the study of law); bent and propensity imply a natural or inherent inclination (the latter also connoting an almost uncontrollable attraction) (she has a bent for art; he has a propensity for getting into trouble); proclivity usually suggests strong inclination (as a result of habitual indulgence, usually toward something bad or wrong) (a proclivity to falsehood).

**in-cline** (in'klin; for *n.*, usually in'klin) *vt.* — **in-cline** [ME *enclinen* < OFr *encliner* < L *inclinare* < *in-*, on, to + *clinare*, to LEAN] 1. to deviate from a horizontal or vertical position, course, etc.; lean; slope; slant. 2. to bend or bow the body or head. 3. a) to have a particular disposition or bent of mind, will, etc. b) to have a tendency. 4. to have a preference or liking. — **vt.** 1. to cause to lean, slope, slant, etc.; bend. 2. to bend or bow (the body or head). 3. to give a tendency to; make willing; dispose; influence. — *n.* an inclined plane or surface; slope; grade; slant. — **in-cline** one's ear to pay heed; listen willingly. — **in-cline** *n.*

**in-clined** (in'klind) *adj.* 1. having an inclination; specif., a) at or on a slant; sloping; leaning. b) disposed; willing; tending. 2. forming an angle with another line, plane, or body.

**inclined plane** a plane surface set at any angle other than a right angle against a horizontal surface; it is a simple machine that increases mechanical advantage but requires a longer working distance. See picture in next column.

**in-clinometer** (in'kle nām'et or -klī) *n.* [*incline* + *-o-* + *METER*] 1. DIP-NEEDLE. 2. CLINOMETER. 3. an instrument that measures the inclination of an axis of an airplane or ship in relation to the horizontal.

**in-close** (in'kloz) *vt.* — **close**, — **close** ENCLOSE

**in-do-sure** (in'klōzhər) *n.* ENCLOSURE

**in-clude** (in'klood) *vt.* — **clude**, — **clude** [ME *includen* < L *includere* < *in-*, in + *cludere*, to shut, CLOSE] 1. to shut up or in; enclose. 2. to have as part of a whole; contain; comprise (the cost includes taxes). 3. to consider as part of a whole; take into account; put in a total, category, etc. [to be included as a candidate] — **in-clude** *able* *adj.* or **in-clude** *ible*

**SYN** — **include** implies a containing as part of a whole; comprise, in discriminating use, means to consist of and takes as its object the various parts that make up the whole (this library comprises 2,000 volumes) and includes many first editions; comprehend suggests that the object is contained within the total scope or range of the subject (he sometimes comprehends the word beauty); comprehends various concepts; embrace stresses the variety of objects comprehended (he had embraced a number of hobbies); involve implies inclusion of an object because of its connection with the subject (as a consequence, or antecedent, acceptance of the office involves responsibilities); — **ANT** — **exclude**

**in-cluded** (id) *adj.* 1. enclosed; contained, or involved. 2. with stamens and pistils wholly contained within the petals, sheath, etc.

**in-clud-ing** (in) *prep.* involving; containing; or comprising

**in-clu-sion** (in'kloo'zhən) *n.* [L *inclusio* < *includere*; pp. of *includere*; see INCLUDE] 1. an including or being included. 2. something included; specif., a) a solid, liquid, or gaseous foreign substance encased in mineral or rock. b) Biol. a separate body, as a grain of starch, within the protoplasm of a cell.

**inclusion body** any of various small particles of nonliving or foreign material occurring in body cells, as a pigment or secretion granule, a microsome, or a virus.

**in-clu-sive** (in'kloo'siv; also, -ziv) *adj.* [L *inclusivus* < L *includere*; pp. of *includere*] 1. including or tending to include; esp., taking everything into account; reckoning everything. 2. including the terms, limits, or extremes mentioned (ten days, from the third to the twelfth inclusive). — **in-clu-sive** *adv.* — **in-clu-sive** *n.*

**in-co-er-cible** (in'kō'ur'sə'bel) *adj.* that cannot be coerced

**in-cog-i-table** (in'kāj'itə'bel) *adj.* [L *incogitabilis*; see IN- & COGITABLE] [Rare] unthinkable; inconceivable

**in-cog-i-tant** (in'kāj'itənt) *adj.* [L *incogitans* < *in-*, not + *cogitans*, prp. of *cogitare*, to COGITATE] [Rare] unthinking; thoughtless

**in-cog-ni-ta** (in'kāj'ni'tə; in'kāj'ni'tə) *adj.*, *adv.*, *n.* INCOGNITO: used of a woman or girl who is unknown

**in-cog-ni-to** (in'kāj'ni'tō; in'kāj'ni'tō) *adj.*, *adv.* [It < L *incognitus*; unknown < *in-*, not + *cognitus*; see COGNITION] with true identity; unrevealed or disguised; under an assumed name; rank, etc. — *n.*, *pl.* — **in-cog-ni-to** 1. a person who is incognito. 2. the state of being incognito. — **in-cog-ni-to** *adv.* the disguise assumed. — **SYN** — **PSEUDONYM**

**in-cog-ni-zant** (in'kāj'ni'zənt; -kāj'ni'zənt) *adj.* not cognizant (of); unaware (of) — **in-cog-ni-zant** *n.*

**in-co-her-ence** (in'kō'hī'əns; also, -hēr-) *n.* 1. lack of coherence; the quality or state of being incoherent. 2. incoherent speech, thought, etc. Also **in-co-her-ency**, *pl.* — **in-co-her-ent** (in'kō'hī'ənt; also, -hēr-) *adj.* not coherent; specif., a) lacking cohesion; not sticking together. b) not logically con-

necting; disjointed; rambling. c) characterized by incoherent speech, thought, etc. — **in-co-her-ent** *adv.*

**in-com-bus-tible** (in'kəm'bus'tə'bel) *adj.* [ME < ML *incombustibilis*] not combustible; that cannot be burned; fireproof — **in-com-bus-tible** *n.* — **in-com-bus-tibil-ity** *n.*

**in-come** (in'kum) *n.* [ME; see IN- & COME] 1. [Archaic] the an instance of coming in. 2. the money or other gain received in a given period, by an individual, corporation, etc., for lab services or from property, investments, operations, etc.

**income statement** a financial statement that summarizes various transactions of a business during a specified period, giving the net profit or loss; profit and loss statement

**income tax** a tax on income or on that part of income exceeds a certain amount

**in-com-ing** (in'kum'ing) *adj.* [ME < *incomen*, to come, in *incuman*] coming in or about to come in [the incoming tide; incoming mayor] — *n.* 1. an act or instance of coming in. 2. [pl.] income

**in-com-men-su-rable** (in'kə'men'shūr'ə'bel; -sər-) *adj.* **incommensurable**; see IN- & COMMENSURABLE] 1. that cannot be measured or compared by the same standard or measure. 2. a common standard of comparison. 3. not worthy of comparison. 4. statement incommensurable with truth. 5. not being integral multiples of the same number or quantity; said of two or more numbers or quantities, as two and  $\sqrt{3}$ . — *n.* an incommensurable quantity, etc. — **in-com-men-su-rabil-ity** *n.* — **in-com-men-su-rably** *adv.*

**in-com-men-su-rate** (in'kə'men'shūr'it; -sər-) *adj.* not commensurate; specif., a) not proportionate; not adequate (a supply incommensurate to the demand). b) INCOMMENSURABLE (adj.)

**in-com-mode** (in'kə'mod) *vt.* — **mod**, — **mod** [Fr *incommoder* < L *incommodare* < *incommodus*, inconvenient < *in-*, in + *commodus*, convenient; see COMMODO] to bother; inconvenience

**in-com-mo-di-ous** (in'kə'mō'dē'əs) *adj.* [IN- & COMMON] causing inconvenience; uncomfortable; troublesome. 2. inconveniently small, narrow, etc. — **in-com-mo-di-ously** *adv.* — **in-com-mo-di-ous-ness** *n.*

**in-com-mod-ity** (in'kə'mād'itē) *n.*, *pl.* — **ties** [ME *incommoditas* < OFr *incommodité* < L *incommoditas*; see INCOMMODO] inconvenience; disadvantage; discomfort

**in-com-mu-ni-cable** (in'kə'myū'nī'kə'bel) *adj.* [L *incommunicabilis*] that cannot be communicated or told — **in-com-mu-ni-cabil-ity** *n.* — **in-com-mu-ni-cably** *adv.*

**in-com-mu-ni-cado** (in'kə'myū'nī'kādō) *adj.*, *adv.* [Sp *incomunicado* < pp. of *incomunicar*, to isolate, cut off from communication; *in-* (< L *in-*, IN-) + *comunicar* < L *communicare*, to COMMUNICATE] 1. without a means of communicating. 2. in isolation or as a prisoner held *incomunicado*, a celebrity living *incomunicado*, 3. not willing to communicate with others

**in-com-mu-ni-ca-tive** (in'kə'myū'nī'kātiv; -nī'kō'tiv) *adj.* communicative; reserved; taciturn

**in-com-mut-able** (in'kə'myūt'ə'bel) *adj.* [ME < L *inmutabilis*; see IN- & COMMUTABLE] that cannot be exchanged — **in-com-mut-abil-ity** *n.* — **in-com-mut-ably** *adv.*

**in-com-pact** (in'kəm'pakt) *adj.* not compact; loosely; not solid

**in-com-pa-rable** (in'kəm'pə'rə'bel; occas. in'kəm'pə'rə'bel) [OFr < L *incomparabilis*] that cannot be compared; having no common basis of comparison; incommensurable beyond comparison; unequalled; matchless [incomparable beauty] — **in-com-pa-rabil-ity** *n.* — **in-com-pa-rably** *adv.*

**in-com-pat-ible** (in'kəm'pat'ə'bel) *adj.* [ML *incompatibilis*] 1. incompatible; not able to exist in harmony or agreement. 2. not going, or getting along, well together; incongruous; conflicting, discordant, etc. (often followed by *with*). 3. that cannot at one time by the same person; said of positions, rank, etc. (said of terms). 4. *Math.* logically contradictory; said of other statements. 5. *Med.* Pharmacy not suitable for use together; said of substances having an undesirable effect on each other or, when mixed, on the body. — *n.* an incompatible person or thing; usually used in pl. — **in-com-pat-ibil-ity** *n.* — **in-com-pat-ibly** *adv.*

**in-com-pe-tent** (in'kəm'pēt'ənt) *adj.* [Fr *incompétent* < L *incompetens*; see IN- & COMPETENT] 1. without adequate skill, edge, fitness, etc.; failing to meet requirements; incapable. 2. not legally qualified. 3. lacking strength and ability to transmit pressure, thus breaking or flowing out. 4. said of rock structures. — *n.* an incompetent person; esp., mentally deficient. — **in-com-pe-tence** *n.* or **in-com-pe-tency** *adv.*

**in-com-plete** (in'kəm'plēt) *adj.* [ME *incomplete* < L *incompletus*; see IN- & COMPLETE] 1. lacking a part or parts; not whole. 2. unfinished; not concluded. 3. not perfect; not thorough. 4. a) incompleteness of assigned work in a course. b) a) (usually, I) indicating incompleteness of assigned work. — **in-com-plete-ly** *adv.* — **in-com-plete-ness** *n.* or **in-com-plete-ness** *adv.*

**in-com-pli-ant** (in'kəm'plī'ənt) *adj.* not compliant; not pliant. — **in-com-pli-ance** *n.* or **in-com-pli-ancy** *n.* — **in-com-pli-antly** *adv.*

**in-com-pre-hen-sible** (in'kəm'prē'hēnsə'bel; -prī) [OFr < L *incomprehensibilis* < L *incomprehensibilis*, comprehensible; that cannot be understood; obscure]

2. [Archaic] illimitable. — **in-com-pre-hen-sibly** *adv.*

**in-com-pre-hen-sion** (in'kəm'prē'hēnsi'ən) *n.* inability to understand

**in-com-pre-hen-sive** (in'kəm'prē'hēnsiv) *adj.* 1. unable to comprehend well; uncomprehending. 2. all-inclusive

**in-com-press-ible** (in'kəm'pres'ə'bel) *adj.* — **in-com-press-ibil-ity** *n.*

**in-com-put-able** (in'kəm'pyūt'ə'bel) *adj.* — **in-com-put-ably** *adv.*

**in-con-ceiv-able** (in'kən'sēv'ə'bel) *adj.* cannot be thought of; understood. — **in-con-ceiv-abil-ity** *n.* or **in-con-ceiv-ably** *adv.*

**in-con-clin-ity** (in'kən'sin'itē) *n.* lack of elegance, esp. in writing

**in-con-clu-sive** (in'kən'kloo'siv) *adj.* failing to lead to a definite result. — **in-con-clusively** *adv.*

**in-con-dense-able** or **in-con-dens-ible** (in'kən'kōn'dēns'ə'bel) *adj.* cannot be condensed. — **in-con-dens-ibil-ity** *n.*

**in-con-dite** (in'kən'dit; -dit) *adj.* [Fr *inconduite*, of *condere*, to put together; constructed; said of literature; crude

**in-con-form-ity** (in'kən'fōrm'itē) *n.* lack of conformity; nonconformity

**in-con-gru-ent** (in'kən'gru'ənt) *adj.* — **in-con-gru-ence** *n.* — **in-con-gru-ity** *n.*

**in-con-gru-ous** (in'kən'gru'əs; -əs; -us; -us) *adj.* 1. the condition, quality, or manner of. 2. a) lack of harmony or agreement. 2. pl. -ties something that is not in harmony or agreement. 3. lacking harmony or agreement. 4. lacking harmony or agreement. 5. lacking harmony or agreement. 6. lacking harmony or agreement. 7. lacking harmony or agreement. 8. lacking harmony or agreement. 9. lacking harmony or agreement. 10. lacking harmony or agreement. 11. lacking harmony or agreement. 12. lacking harmony or agreement. 13. lacking harmony or agreement. 14. lacking harmony or agreement. 15. lacking harmony or agreement. 16. lacking harmony or agreement. 17. lacking harmony or agreement. 18. lacking harmony or agreement. 19. lacking harmony or agreement. 20. lacking harmony or agreement. 21. lacking harmony or agreement. 22. lacking harmony or agreement. 23. lacking harmony or agreement. 24. lacking harmony or agreement. 25. lacking harmony or agreement. 26. lacking harmony or 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**RELATED PROCEEDINGS APPENDIX**

**NONE**

(There are no related proceedings.)